

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JACOB S. CERCONE
United States Air Force**

ACM 35439

30 August 2004

Sentence adjudged 7 November 2002 by GCM convened at Travis Air Force Base, California. Military Judge: R. Scott Howard (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Lieutenant Colonel Gilbert J. Andia Jr., Major Terry L. McElyea, and Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Major John D. Douglas, and Captain Stacey J. Vetter.

Before

**PETROW, BRESLIN, and GRANT
Appellate Military Judges**

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant contends he is entitled to a sentencing rehearing in light of newly discovered evidence, or relief from an inappropriately severe sentence because of mitigating circumstances, including his youth and immaturity. We reject both arguments. First, the appellant has not met the heavy burden of establishing grounds for a new sentencing hearing based on newly discovered evidence. *See* Rule for Courts-Martial 1210(f)(2). Second, we hold that the appellant's sentence was not inappropriately severe after considering the entire record, the character of the offender and the nature of the offenses. *United States v. Peoples*, 29 M.J. 426 (C.M.A. 1990); *United States v. Snelling*, 14 M.J. 267 (C.M.A. 1982).

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court